

CRIMINAL APPEAL No.330 OF 1993

Against the judgment of conviction and order of sentence dated 17th September, 1993 passed by Shri J.P. Paul, Special Judge (E.C. Act), Madhubani, in G.O. Case No.-3/1985/T.R. Case No.- 22/1993.

1. SUDDI MIAN
S/O-Late Badri Mian
 2. MD.SHAFIQUE
S/O-Late Zainul Haque
Both R/O-Vill-Salempur
P.S.- Pandaul,
Distt.- Madhubani
- (Appellants)

Versus

1. STATE OF BIHAR
 2. Shri Vinsent Surin
The then Marketing Officer
Madhubani (Complainant)
- (Respondents)

For the appellants : Mr. Kamal Kishore Mishra (Advocate)
For the State : Mr. Ali Mozaffar (APP)

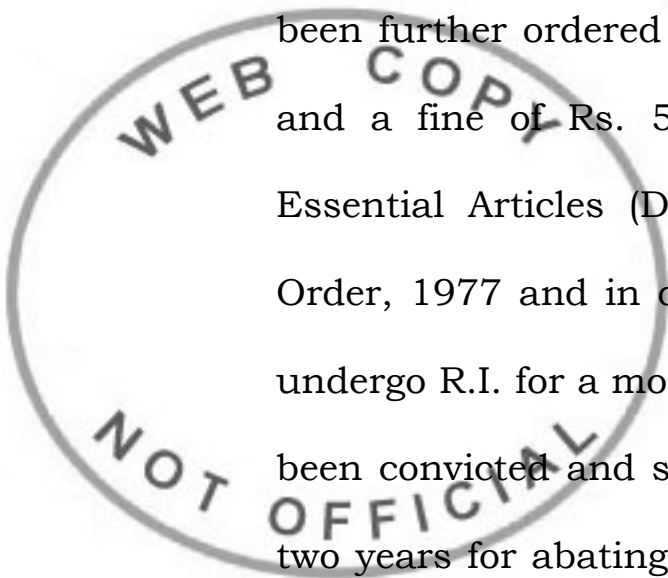
P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S.K. Sharma, J.

Two appellants Suddi Mian and Md. Shafique @ Rudal have been convicted vide judgment dated 17th September, 1993 passed by the Special Judge (E.C. Act), Madhubani in G.O. Case No.- 3/1985/T.R. Case No.-22/1993 whereby the Appellant No. 1 Suddi Mian was found guilty for contravening provisions of the

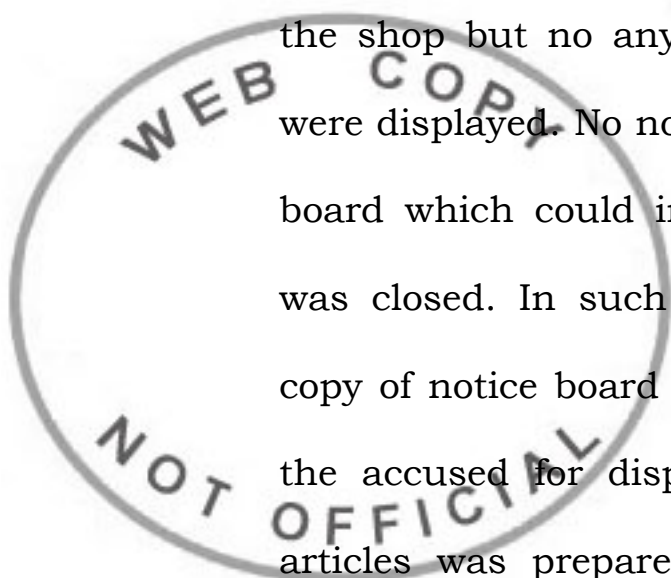
Bihar Trade Articles (Licenses Unification) Order, 1984 and the Bihar Essential Articles (Display of Prices and Stock) Order, 1977 and Appellant No. 2 was found guilty for abetment and he has been convicted for contravening Provisions of the Bihar Trade Articles (Licenses Unification) Order, 1984. The Appellant No. 1 has been sentenced to undergo R.I. for two years and a fine of Rs. 500/- and in default in payment of fine to further undergo R.I. for a month. The Appellant No. 1 has been further ordered to undergo R.I. for one year and a fine of Rs. 500/- for violation of Bihar Essential Articles (Display of Prices and Stock) Order, 1977 and in default in payment of fine to undergo R.I. for a month. The Appellant No. 2 has been convicted and sentenced to undergo R.I. for two years for abating and violating the Provisions of the Bihar Trade Articles (Licenses Unification) order, 1984 and a fine of Rs. 500/- and in default of payment to undergo simple imprisonment for one month. However, all the sentences were



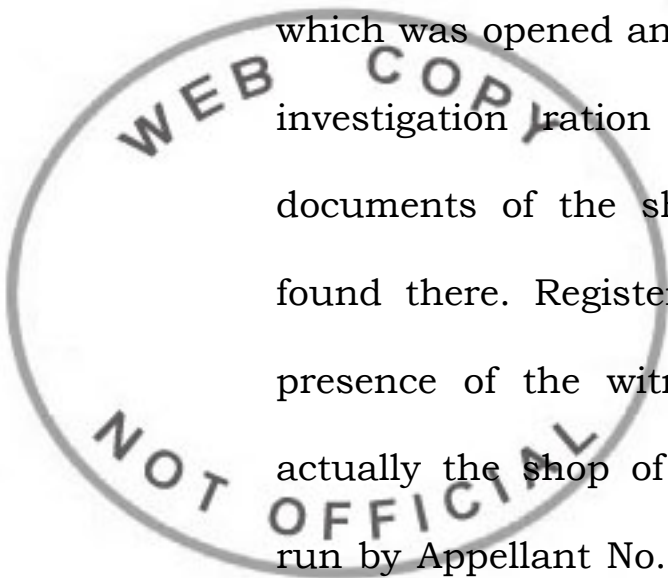
directed to run concurrently.

2. The then Marketing Officer Vinsent Surin (P.W. 5) after obtaining sanction order for prosecution for violation of different clauses and conditions of Bihar Essential Articles (Display of Prices and Stock) Order, 1977 filed a complaint petition along with seizure-list before the Special Judge (E.C. Act), Madhubani which resulted in initiation of criminal proceeding against Appellant No. 1 who is a licensee dealer in Public Distribution System, Salempur, P.S.- Pandaul, Madhubani on the allegation for violation of Provisions of Bihar Trade Articles (Licenses Unification) Order, 1984 and also for violation of different clauses and conditions of Bihar Essential Articles (Display of Prices and Stock) Order, 1977 both punishable under Section 7 of the E.C. Act whereas Appellant No. 2 Md. Safique @ Rudal was alleged to have abetted for violation of the aforesaid provisions and clauses and he was guilty under Section 8 of the E.C. Act. In the

written complaint, it was alleged that the Flying Squad on 09.10.1985 consisting of himself and other government officials raided the shop which was found closed and the dealer was found absent. By the side of the shop the complainant was told by the local people that the dealer is in the habit of committing illegalities in distribution of essential articles to the consumers. Further allegation was that the notice board of the stock of articles and prices was found hanging outside the shop but no any price and stock of articles were displayed. No notice was found on the notice board which could indicate as to why the shop was closed. In such view of the matter, a true copy of notice board hanging outside the shop of the accused for displaying prices and stock of articles was prepared in presence of witnesses Md. Jhamman Mian and Lakhan Thakur bearing their signatures and also some government officials including Ahmad Khan, the then Supply Inspector, Jainagar and Suresh Narayan Singh,



Supply Inspector, Madhubani. The persons present told the complainant about the irregular supply to the consumers by Appellant No. 1. It was also alleged that the Appellant No. 1 was charging more money than the price which was actually fixed. In course of investigation, accused Safique @ Rudal came near the shop of Suddi Mian and told that his shop of grocery was situated nearby. At that time the shop was closed, the complainant asked him to open the shop which was opened and inspected and in course of investigation ration cards and other relevant documents of the shop of licensee dealer were found there. Register and cards were seized in presence of the witnesses. It was alleged that actually the shop of Appellant No. 1 was being run by Appellant No. 2. Appellant No. 2 accepted this fact and stated that he has made relevant entries in the sale and stock registers. Appellant No. 2 escaped while he was being interrogated. After perusal of the stock register of sugar, the



complainant found that the entry on the same is only up to 22.09.1985. It was also found that the Appellant No. 1 has lifted sugar on 04.09.1985, 05.09.1985 and 06.09.1985. The entire sugar was accepted to be sold but there were no entries in the ration cards. No distribution of sugar was shown in the ration cards. Ration cards were perused and those names were mentioned in the complaint petition. Similarly, the entries with regard to sale of Kerosene Oil were up to 15.09.1985 and thereafter there was no entry. The complainant suspected that the dealer has distributed Kerosene Oil to some individual persons after realizing high prices.

3. After perusal of the complaint petition and relevant documents cognizance of the offences was taken. The accused persons were directed to appear and after their appearance, substances of accusations were explained. When they pleaded innocence then the trial court proceeded.

4. In order to prove this case, the prosecution has examined five witnesses. Four witnesses who were examined were residents of Village Bijai and Salempur. The complainant himself was examined as P.W. 5. P.W. 1 Jhamman Mian, P.W. 2 Munir Mian, Shive Narayan Mahto P.W. 3, and P.W. 4 Saddique Mian who were the witnesses of the complainant have not supported any part of allegation and all of them were declared hostile. It was only the complainant who has supported this case. The trial court found the appellants guilty and accordingly convicted and sentenced them, as noted above.

5. It has been submitted by the learned Counsel for the appellants that the distribution hours of Public Distribution Shop is fixed for 8 A.M. to 12 noon and from 2 P.M. to 6 P.M. as stated by the complainant in his deposition before the trial court. It is very difficult to open the shop of Public Distribution System till 6 P.M. and that

too when the days become shorter. So, it was argued that closing the shop before the stipulated time in the above circumstances is not an illegality. It has also been submitted that the shop of the Appellant No. 1 Public Distribution Shop was never inspected. The complainant inspected the grocery shop which was nearby the Public Distribution Shop and it was found that the distribution was not for the actual needy persons.

6. P.W's 1, 2, 3 and 4 have not supported any part of allegation against any of the appellant at all. All of them have been declared hostile. The case is based only on the evidence of single witness so as the complainant himself. Other members of the raiding party were not examined by the prosecution. This fact is that the version of the complaint was not supported by all the four independent witnesses so, the trial court has erred in convicting the appellants.

7. I have heard learned Counsel appearing on behalf of the appellants and the APP

appearing on behalf of the State.

8. In this case, except complainant, nobody has supported the case. Other four witnesses who were examined as witnesses of the occurrence have also not supported the case rather they have stated that proper supply of ration was made by Appellant No. 1. Not even one beneficiary was brought by the complainant who could say that either irregular supply was made or inflated price was charged. Nobody has stated that the essential articles were sold in the black market. P.W's 1 and 4 are the witnesses of village and they have stated that no illegality was committed by the Appellant No. 1 in distribution of essential articles to the consumers. Once they have not supported the case, then it is credited as to whether the allegations are true or not. Only the complainant has supported this case and he has not been supported by other witnesses. It is difficult to presume as to what violation was caused of the Provisions of Bihar Essential

Articles (Display of Prices and Stock) Order, 1977.

It is not the case of the complainant that the shop of Appellant No. 1 was inspected and without inspecting the shop, it is very difficult to presume that proper entry was not made. For passing the order of conviction, it is essential that the prosecution must prove its case beyond all reasonable doubts.

9. After considering the materials on record, I am of the view that the trial court has erred in passing the order of conviction and sentence. So, the impugned judgment needs to be set aside.

10. In the result, this appeal is allowed and the judgment of conviction and sentence passed by the court below is hereby set aside. The appellants are also discharged from the liabilities of their respective bail bonds.